

December 22, 2016

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VIA MESSENGER

Jeff Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 7166

Dear Mr. Jordan:

On behalf of Hillary for America and Jose H. Villarreal in his official capacity as Treasurer ("Respondents"), we submit this letter in response to the complaint filed by The Republican Party of Brown County on October 26, 2016 (the "Complaint"), alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Federal Election Commission ("FEC" or "Commission") regulations. The Complaint fails to include any facts, which, if proven true, would constitute a violation of the Act.¹ The Commission should accordingly dismiss the Complaint and take no further action.

The Complaint stems from an advertisement aired by Nelson for Wisconsin, the principal campaign committee of Tom Nelson, a House candidate for the 8th congressional district of Wisconsin in the 2016 general election.² The Complaint alleges that "due to the content and timing of the advertisement at issue, it is...likely" that Respondents coordinated this advertisement with Nelson for Wisconsin, resulting in an in-kind contribution.³ The sole basis for this allegation of coordination is the advertisement's proximity to the general election and its inclusion of a reference to Donald Trump, Secretary Clinton's opponent in the 2016 general election. The allegation is insufficient as a matter of law.

A public communication must satisfy a three-prong test to be considered a coordinated communication: it must (1) be paid for by a person other than a candidate, authorized committee or political party committee with which it is coordinated; (2) satisfy one or more content standards; and (3) satisfy one of several conduct standards.⁴ Each prong must be satisfied for the communication to be considered coordinated, and thus an in-kind contribution. Yet in this case,

¹ See 11 C.F.R. § 111.4(d)(3).

² Compl. at 1.

³ *Id.*

⁴ 11 C.F.R. § 109.21.

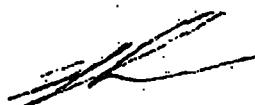
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the Complaint relies solely on the timing and the content of the advertisement. It assumes that if the advertisement satisfies the "content" prong, the "conduct" prong must also be satisfied. Commission regulations clearly require that each prong be analyzed separately.⁵

Under Commission regulations, the "conduct" prong can be satisfied in one of five ways.⁶ Specifically, the "conduct" prong can be satisfied if (1) the communication was created at the request or suggestion of the candidate; (2) the candidate was materially involved in the creation of the communication; (3) the communication was created after substantial discussion with the candidate; (4) a common vendor was engaged by the person paying for the communication and the candidate; or (5) a former employee of the candidate worked for the person paying for the communication.⁷ The Complaint does not allege any activity by Respondents that would satisfy the "conduct" prong. In fact, the Complaint fails to allege a single fact to suggest that Respondents coordinated this advertisement with Nelson for Wisconsin, which they did not.

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act.⁸ For claims of coordination, the Commission requires an even stronger showing that Complainant provide "probative information of coordination."⁹ Additionally, the Commission has made clear that "unwarranted legal conclusions [drawn] from asserted facts" or "mere speculation" are *not* sufficient to find reason to believe that Respondents violated the Act.¹⁰ Here, the Complaint alleges coordination between Respondents and Nelson for Wisconsin, presents no fact to support that allegation. Accordingly, we request the Commission find no reason to believe Respondents committed any violation of the Act and dismiss this matter immediately.

Very truly yours,



Marc Erik Elias

⁵ See *id.* § 109.21(c), (d).

⁶ *Id.* § 109.21(d).

⁷ *Id.*

⁸ FEC Matter Under Review 4960, Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 1 (Dec. 21, 2000).

⁹ FEC Matter Under Review 5999, Factual and Legal Analysis (Dec. 15, 2008); see also FEC Matter Under Review 6059, Factual and Legal Analysis at 6 (Feb. 3, 2009).

¹⁰ FEC Matter Under Review 4960, *supra* note 8.